IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 1, 2003 Session

TENNESSEE WASTE MOVERS, INC. v. LOUDON COUNTY, ET AL.

Appeal from the Chancery Court for Loudon County
No. 10100 Frank V. Williams, III, Chancellor

Filed October 30, 2003

No. E2002-02490-COA-R3-CV

Tennessee Waste Movers, Inc. ("TWM") filed an application with the Loudon County Commission ("the Commission") seeking to expand an existing landfill in the county. The application was filed pursuant to the provisions of Tenn. Code Ann. § 68-211-701, *et seq.*, popularly known as the "Jackson Law." Following a hearing, the Commission denied TWM's application. TWM then petitioned the Loudon County Chancery Court for judicial review. At the conclusion of a two-day bench trial, the court held in favor of the Commission's ruling. Consequently, it dismissed TWM's petition. On appeal, TWM argues that the trial court erred in its interpretation of the meaning of *de novo* review as that concept is found in the Jackson Law and that both the Commission and the trial court failed to properly consider the criteria set forth in the Jackson Law. If successful on appeal, TWM seeks an award of attorney's fees and litigation costs. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

J. Polk Cooley, Rockwood, Tennessee, and Michael D. Pearigen and Jennifer L. Brundige, Nashville, Tennessee, for the appellant, Tennessee Waste Movers, Inc.

Harvey L. Sproul, Lenoir City, Tennessee, and E. H. Rayson and Penny A. Arning, Knoxville, Tennessee, for the appellees, Loudon County and Loudon County Commission.

OPINION

I.

TWM owns and operates a construction and demolition debris landfill in Loudon County. The operator of such a landfill is prohibited from accepting hazardous or sanitary waste. However,

TWM has been granted special authorization to receive asbestos-containing material and hot ash from the Kimberly Clark plant in Loudon County.

The landfill operation is situated on approximately eleven acres within the Matlock Bend Industrial Park. The landfill itself takes up five of these acres. By the middle of 2001, the landfill was operating at 80% capacity, with a projected life of only two years. In July, 2001, TWM filed an application with the Commission, requesting permission to horizontally expand the existing landfill. The requested expansion would increase the existing site by twelve acres, with approximately 7.7 additional acres being dedicated to the landfill; and would extend the life of the landfill by ten years.

In its initial application, as well as in two supplements, TWM addressed the statutorily-mandated criteria found in the Jackson Law, criteria that must be utilized when considering an application under this statutory scheme. TWM expounded upon the type of waste the landfill receives; the method of waste disposal; the minimal amount of odor and noise generated by the landfill; the lack of a significant increase in traffic as a result of the proposed expansion; and the landfill's compatibility with existing development and zoning plans. With respect to the projected impact the landfill expansion would have on property values in the surrounding area, TWM supplied the Commission with a market analysis study, which was prepared by two state-certified general real estate appraisers. The study concluded that "[p]roperty values appear to be stable within the subject property neighborhood." Further, the preliminary findings of the study indicated that "the proposed expansion of the landfill will have no detrimental impact on the market value of properties in the subject property neighborhood." As to the economic impact that the expansion would have on Loudon County, TWM submitted that the landfill expansion would annually net the county over $13,000 in real estate taxes, as well as $16,000 in personal property taxes.

On September 13, 2001, a public hearing was held before the Commission, pursuant to Tenn. Code Ann. § 68-211-703 (2001). The hearing gave TWM an opportunity to present their plan for the proposed expansion and allowed commissioners and other interested citizens to voice their opinions and concerns. Attorney Coulter (Bud) Gilbert spoke on behalf of TWM, covering each of the eight criteria under the Jackson Law. Following Gilbert's presentation, several citizens addressed the Commission. Among those addressing the Commission was John Thornton, a Chattanooga resident who, just eight months prior, had purchased 1300 acres of land in Matlock Bend for $9,250,000. Thornton planned to use the property for the development of an upscale residential and golf community called Thunder Bend. Thunder Bend would be bounded by the Tennessee River on one side, and partially bounded by the industrial area of Matlock Bend, home to the landfill and its proposed expansion. At the hearing, Thornton spoke of his concern over the negative impact that the expansion would have on property values and the success of Thunder Bend. Thornton also stated that his development was projected to double "the entire county revenue in taxes" and "quadruple [the City of Loudon's] tax base."

The Commission convened for its regular meeting on October 1, 2001. At this meeting, TWM again presented its plans for, and the potential effect of, the planned expansion. Thornton also

offered his remarks in opposition to the expansion, citing the adverse impact the expansion would have on property values and the local economy:

> And will it have an economic impact? Well, I think all of you commissioners are aware of the economic impact that [Thunder Bend] would have. It would double the county's tax base, quadruple the city's tax base. It would employ literally thousands of construction workers, consultants, and different people with the half-a-billion-dollar investment that would ultimately end up in Matlock Bend over a 10-year period.
>
> * * *
>
> But I do think, quite honestly, it will have a negative impact on property values, and I think it will have a catastrophic economic impact on this county if it results in us not being able to complete the development and get it – get it going.

Licensed realtor and local resident Ted Lynn spoke of the problems he perceived with the landfill expansion:

> Mr. Thornton is going to have a job on his hands with marketing if we cannot isolate the landfill the best way possible. I just don't see that it's in any interest at all of the county at this time to expand or start a new landfill in here. It's just not good business. There's a lot of money to come in off the Thornton development.
>
> Not only on this 1300 acres, but the whole end of the county will reap the benefits from it. The entire county will reap the benefits for the projected numbers on the taxes.

Other Loudon County citizens and several commissioners expressed their several views regarding TWM's application. At the conclusion of the meeting, the Commission, by a vote of 6 to 3, denied TWM's application.

On November 28, 2001, TWM filed a petition for *de novo* review with the trial court. That court conducted a two-day bench trial in August, 2002. In addition to considering the record from the Commission hearings, the trial court heard the testimony of several witnesses. Carl Towne, TWM's district manager for East Tennessee, initially stated that he did not think the expansion would have any impact on Thunder Bend. However, on cross examination, Towne admitted that the subdivision should enlarge the county's tax base and questioned why anybody would develop an upscale community or buy a house on property adjacent to a Class 4 landfill. Doyle Arp, the Loudon

County tax assessor, testified that the calculations in his office gave no indication that the landfill had negatively impacted property values. He tempered this assertion by noting that his office "deal[s] with history, not with projections," so he could not express an opinion on the impact that the landfill expansion might have on property values in the future. When questioned on cross examination regarding the impact Thunder Bend potentially could have on the county's tax revenues if it was successfully developed, Arp responded that the impact would be "astronomical."

TWM called Randy Button, a certified real estate appraiser, as an expert witness. Button, who had collaborated on the market study analysis which indicated that property values were stable and that the expansion would not negatively impact those values, admitted on cross examination that the property values he had assessed as stable were primarily older, modest homes. He also conceded that, in making his analysis, he had not taken the Thunder Bend development into consideration, stating that he "was never asked to do that." Rather, he was "asked to submit an overall general impact on the neighborhood."

Hop Bailey, a realtor and real estate appraiser who has been in practice for 55 years, testified as an expert for the Commission. Bailey stated that the landfill expansion, along with the other landfill and plants in the area, would have a negative impact on Thunder Bend. When asked on cross examination why the expansion would be any more of a problem than the nearby sanitary-waste landfill or the mushroom plant, Bailey responded that the expansion was "just an addition" to the problem.

The Commission also called George Archer, a Knoxville real estate broker, as a witness. He stated the following with respect to the impact that the proposed expansion would have on Thunder Bend:

> Here again, one of the main issues is perception and not reality. And that's one of the biggest factors that I think Mr. Thornton would have to consider in his overall scheme of things and the impact of what we're talking about is that, you know, just dealing with the public and trying to make sure that they are comfortable with the fact that either landfill would be a potential either environmental or some source of negative impact on their investment.

Bob Sterchi, a Matlock Bend resident and real estate developer, testified that, based upon his experience in real estate, the landfill expansion "would be detrimental" to both investors and purchasers in Thunder Bend.

At the conclusion of the trial, the court issued its ruling from the bench, finding in a favorable fashion *vis-a-vis* the Commission's decision. The trial court's findings, in pertinent part, are as follows:

* * *

A number of reasons have been cited by the [Commission] in support of its decision to deny the expansion, but the principle [sic] reason given by the [Commission] and the focus of most of the evidence, at least during the trial, is the possibility that the expansion of the landfill could harm the development of an adjoining thirteen hundred acre tract of land purchased by John Thornton along Watts Bar Lake.

* * *

This, as previously noted, is a de novo review of the [Commission's] denial of the proposed expansion. At issue in the case is the application of the Jackson Law, codified in [Tenn. Code Ann. §] 68-211-704(b), which lists statutorily mandated criteria which must be considered in granting or denying a request to expand an existing landfill.

The fact that this is a de novo review simply means that the decision of the [Commission] does not carry a presumption of correctness. All relevant evidence must be considered by the Court, but the task here is simply to determine from all of the evidence whether or not there is substantial or material evidence related to the eight criteria set out in the Jackson Law to support the denial of [TWM's] proposed expansion.

If substantial or material evidence exists to justify the denial, then the [Commission] cannot be said to have acted arbitrarily or capriciously. Even though the record from below is being considered, it is true, as [TWM] argues, that some of the statements attributed to the members of the [Commission] may not have been related to factors which may properly be considered under the Jackson Law.

Accordingly, the sufficiency of the evidence in this proceeding will be determined to the exclusion of any improper factors or considerations which may appear in the record from below.

And before I go into the reasons for this, first let me say that if this matter was before me for the purpose of making a personal decision as to whether or not the expansion should be allowed, I would find for [TWM]. Much of the testimony has been related to the lack of visibility of the landfill and the area to be expanded from both the residential development and the proposed road. In this regard, the

landfill would not be visible from the residential development because of a high ridge which essentially separates the residential area from the industrial park.

The purchasers of homesites in the planned development would almost certainly be constrained to pass through the industrial park to gain access to their property and in the process of the ingress and egress, residents and potential buyers would have to pass by the landfill.

The purchaser's proposed landfill produces no offensive odors except for several fires in the landfill caused by the dumping of hot ash so this is almost completely a case in which the visual impact of the landfill and the knowledge of its close location to the development could create in the minds of potential homeowners a negative perception of the development and hurt land sales and potential property values.

But even this could be mitigated. The grade of the road which Thornton proposes has not yet been established so that [it is] not clear what part, if any, of the landfill would be visible. Moreover, sufficient space appears to exist along the proposed road to permit the developer to place screens or vegetation to prevent residents from seeing the landfill as they come and go. So there appears to be reasonable solutions to most of the problems posed by the landfill.

Moreover, the problems presented by [TWM's] landfill as it presently exists is, in relative terms, less than problems posed by other existing operations in the industrial park. Monterey Mushrooms, for example, which will adjoin the road, grows mushrooms using organic material which produces a foul odor which can be detected at some distance from their property depending on the prevailing winds.

Also Loudon County operates a sanitary landfill just past Monterey Mushrooms, also in the industrial park and that landfill, unlike [TWM's] landfill, accepts household garbage which also produces an odor.

So it just seems reasonable that the problems of the proposed expansion could be dealt with in ways that could both accommodate the expansion of the landfill and which would minimize the impact to the residential development in terms of property values and tax revenues to the county.

In the final analysis, it is the reasonableness or unreasonableness of opinions expressed in the trial of the lawsuit which will determine the outcome, for those opinions all relate to the potential for future consequences to the county regardless of whether [TWM's] application is approved or rejected it will never be possible to know for certain what results the opposite decision would have produced.

If the landfill is allowed to expand, we can never know what the residential property values and tax revenues would have been had the landfill not expanded and vice versa. And this should not be interpreted to mean that the Court is bound by the testimony of any expert. Expert opinion is to be weighed with great caution and in light of all of the facts. Nor is the Court bound by the testimony of the greater number of witnesses. But it is the reasonableness or unreasonableness [of] testimony of the experts which the Court must consider and even [TWM's] own experts concede that reasonable people could reach the conclusion that expansion of the landfill could negatively impact the residential area and its property values as contemplated by subsection 3 and 4 of [Tenn. Code Ann. §] 68-211-704(b).

This is one of the reasons why the Courts must acknowledge and defer to the decisions made by the legislative branch, provided that those decisions are made within the requirements of the law. The Court cannot substitute its judgment for the lawful, reasonable and rational judgment of commission members elected by the people of Loudon County.

By giving the [Commission] the choice to approve or disapprove landfills and by setting out the criteria by which that is accomplished, the [Commission] has some flexibility in deciding which uses are detrimental to other uses the [Commission] wants to promote.

Moreover, it is not necessary for the [Commission] to show that a majority of the eight factors support the [Commission's] decision. Substantial and material evidence supporting even one of the eight factors is sufficient to sustain the [Commission's] denial of [TWM's] application to expand their operations.

* * *

In this case . . . we have the testimony of experts dealing with the statutory issues. And the quality and factual predicates of those

> opinions are similar for both [TWM] and [the Commission]; in other words, if the [Commission] cannot rely on the strength of their own experts who are similar in training and experience to the experts provided by [TWM] to prove their case, then it would seem to be almost a hopeless situation for the [Commission] in attempting to deny an expansion of a landfill – at least for these statutory reasons.
>
> So as I see it, I think it's a matter of – given the testimony here, the expert testimony with regard to the potential harm to the surrounding area from the operations of [TWM's] landfill and the projected impact on property values in the residential area, the Court is finding for the [Commission], and in this case, it's a legislative decision, and I'm not inclined to jump in and start substituting my personal opinion for the opinion of the [Commission] simply because had I been personally judging those facts, I would have found in favor of [TWM].

From this judgment, TWM appeals.

II.

In this non-jury case, our review is *de novo* upon the record of the proceedings below; but the record comes to us with a presumption of correctness as to the trial court's factual determinations that we must honor unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); ***Wright v. City of Knoxville***, 898 S.W.2d 177, 181 (Tenn. 1995); ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993). Our review of questions of law is *de novo* with no such presumption of correctness attaching to the trial court's conclusions of law. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996); ***Presley v. Bennett***, 860 S.W.2d 857, 859 (Tenn. 1993).

III.

Our analysis of the issues in the instant case causes us to focus on the following relevant statutory provisions:

Tenn. Code Ann. § 68-211-701 (2001)

> No construction shall be initiated for any new landfill for solid waste disposal or for solid waste processing until the plans for such new landfill have been submitted to and approved by:
>
> (1) The county legislative body in which the proposed landfill is located, if such new construction is located in an unincorporated area;

* * *

Tenn. Code Ann. § 68-211-704 (2001)

(a) Within thirty (30) days after notice and an opportunity for a public hearing as provided in § 68-211-703, the county legislative body, the municipal governing body or both such entities shall approve or disapprove the proposed new construction for solid waste disposal by landfilling or solid waste processing by landfilling.

(b) The following criteria shall be considered in evaluating such construction:

(1) The type of waste to be disposed of at the landfill;

(2) The method of disposal to be used at the landfill;

(3) The projected impact on surrounding areas from noise and odor created by the proposed landfill;

(4) The projected impact on property values on surrounding areas created by the proposed landfill;

(5) The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed landfill;

(6) The economic impact on the county, city or both;

(7) The compatibility with existing development or zoning plans; and

(8) Any other factor which may affect the public health, safety or welfare.

(c) Judicial review of the legislative body's determination shall be a de novo review before the chancery court for the county in which the landfill is proposed to be located.

IV.

A.

TWM presents three issues on appeal. First, TWM asserts that the trial court erred in its interpretation of the *de novo* standard of review required by the Jackson Law. Second, TWM argues

that the trial court erred in upholding the Commission's denial of the application because, so the argument goes, the Commission's decision was not supported by substantial and material evidence. Third, TWM contends that, if successful on appeal, it is entitled to attorney's fees and litigation costs.

B.

Under Tenn. Code Ann. § 68-211-704(c), judicial review of the Commission's denial of TWM's application for expansion is a "de novo review" before the Loudon County Chancery Court. TWM argues that the chancery court improperly applied this standard of *de novo* review. Specifically, TWM takes issue with the assumption embodied in the Chancellor's statement that if the case was before him "for the purpose of making a personal decision as to whether or not the expansion should be allowed," he would have found for TWM. TWM asserts that *de novo* review *requires* the trial court to substitute its independent judgment for that of the Commission and "reconsider and redetermine both the facts and the law from all the evidence as if no such determination had been previously made." ***Stephens v. Roane State Cmty. Coll.***, No. M1998-00125-COA-R3-CV, 2000 WL 192577, at *4 (Tenn. Ct. App. M.S., filed February 18, 2000) (quoting ***Cooper v. Alcohol Comm'n of the City of Memphis***, 745 S.W.2d 278, 281 (Tenn. 1988)).

Furthermore, TWM advances the position that the court improperly applied the common law writ of certiorari standard of review, rather than the statutory writ of certiorari. Under the common law writ of certiorari standard, the trial court reviews the record of the administrative proceedings to determine whether any material evidence exists to support the administrative decision. *See* ***Cooper v. Williamson County Bd. of Educ.***, 746 S.W.2d 176, 179 (Tenn. 1987) (quoting ***Davison v. Carr***, 659 S.W.2d 361, 363 (Tenn. 1983)). The court can, however, consider new evidence in order to determine whether the administrative board "'exceeded its jurisdiction or acted illegally, capriciously or arbitrarily.'" ***Id.*** By contrast, the statutory writ of certiorari "may provide for some form of a trial *de novo*." ***Cooper***, 746 S.W.2d at 179.

> "The meaning of 'trial de novo' in each statute is obviously dictated by the wording and context of the statute in which it appears and by the nature of the administrative body, decision and procedure being [reviewed]."

Cooper, 746 S.W.2d at 179 (quoting ***Pledger v. Cox***, 626 P.2d 415, 416-17 (Utah 1981)).

TWM contends that the trial court's consideration of the facts in light of the "substantial and material evidence" rule and its determination that the Commission acted "arbitrarily or capriciously" were improper, as the Jackson Law's mandate of *de novo* review is, according to TWM, clearly a "species of the statutory writ of certiorari." ***Cooper***, 746 S.W.2d at 179. In support of these positions, TWM relies heavily upon the ***Cooper*** case, which involved the Teacher Tenure Act. Such reliance is misplaced. The case of ***Tucker v. Humphreys County***, 944 S.W.2d 613 (Tenn. Ct. App. 1996), is the only appellate case that has addressed the issue of *de novo* review in the context of the

Jackson Law. Accordingly, the doctrine of *stare decisis* and the Rules of the Tennessee Supreme Court clearly make the ***Tucker*** decision pertinent to the issue now under consideration. Tenn. Sup. Ct. R. 4(H)(2) provides, in pertinent part, as follows:

> Opinions reported in the official reporter . . . shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.

Having said this, we recognize our statutory authority to revisit the correctness of the ***Tucker*** case.

In ***Tucker***, the plaintiffs submitted to the Humphreys County Board of Commissioners an application for a proposed landfill. ***Id.*** at 615. At the conclusion of a hearing on the matter, the board voted to reject the plaintiffs' application. ***Id.*** at 616. The plaintiffs then sought a *de novo* review with the chancery court, pursuant to Tenn. Code Ann. § 68-211-704(c). ***Id.*** The chancery court initially issued an order stating that it would "conduct a completely new hearing," allowing each party to present witness testimony and other material evidence, and "the Court will render its decision based upon the evidence presented at the hearing." ***Id.*** Upon a motion to reconsider, the court ordered the following:

> The Court holds that the method of judicial review prescribed by the Jackson law shall be by Common Law Writ of Certiorari on the record produced from the Joint Public Hearing and Meeting of the Humphrey County Commission held on May 11, 1993 to determine whether or not the Humphreys County Commission acted illegally or beyond the scope of its authority.

Id. At the conclusion of the hearing before the trial court, the court found that the county commission "did not act illegally, arbitrarily or capriciously" in denying the plaintiff's application to construct a landfill, and that "there is sufficient material evidence in the record to support" the commission's decision. ***Id.*** at 617.

On appeal, the plaintiffs argued that *de novo* review, as contemplated by Tenn. Code Ann. § 68-211-704(c), "implies a broader review, involving a new trial before the Court of all issues presented to the Board." ***Id.*** at 619. This court began its analysis by noting that *de novo* has a variety of different meanings:

> An appeal from General Sessions Court to Circuit Court involves a complete new trial of the issues without reference to evidence introduced in General Sessions Court unless re-introduced on appeal. Apparently plaintiffs[] desire such a review. To grant such a judicial review in the present case would substitute the discretion of the courts

> for that of the County Commissioners, *which is clearly not the legislative intent*.

Id. (citations omitted) (emphasis added).

The plaintiffs in ***Tucker*** asserted that the trial court should have followed the Supreme Court's decisions in ***Frye v. Memphis State Univ.***, 671 S.W.2d 467 (Tenn. 1984) and ***Case v. Carney***, 213 Tenn. 597, 376 S.W.2d 492 (1964). With respect to ***Frye***, which involved the tenure of university faculty, the ***Tucker*** court found it inapplicable, due to the fact that ***Frye*** involved a clear and convincing evidence standard. ***Tucker***, 944 S.W.2d at 620.

Case involved a beer board's denial of a beer license. ***Tucker***, 944 S.W.2d at 620. This court in ***Tucker*** differentiated ***Case*** from the case before it as follows:

> Under [Tenn. Code Ann.] § 27-9-111, a person aggrieved by the action of a beer board had the sole remedy by the circuit or chancery court by the statutory writ of certiorari with trial de novo as a substitute for appeal with the cause being tried as if it had originated in said court, and the Trial Judge is required to make an independent judgment for that of the board.
>
> This is the relief requested by the plaintiffs in the present case, but this is not a beer board case, and is not subject to the provisions of the code provisions for review of beer board cases where the applicant has a right to a license unless specified facts exist, and judicial review de novo reviews the question of whether such prohibitory facts exist.
>
> The present case presents a different situation wherein the statute requires the Board to consider specified criteria, but does not confer upon the applicant the right to a permit if one or more prohibitory conditions exist.
>
> Nevertheless, the "substantial and material evidence rule" and the "arbitrary or capricious rule" require that some substantial reason be proven for refusing the permit before the Board may validly refuse the permit. [Tenn. Code Ann.] § 68-211-704(c) requires the reviewing court to consider all evidence presented to the Board, plus any relevant evidence presented to the Court and to decide de novo the factual question of whether a fact or facts exist which justified the Board in refusing the permit.

Tucker, 944 S.W.2d at 620-21 (citation omitted). This court then affirmed the action of the trial court in denying the permit. ***Id.*** at 623.

We believe that ***Tucker*** is controlling and that its interpretation of the Jackson Law's *de novo* review language is the correct interpretation of this statutory concept. Following ***Tucker***, we find no error in the trial court's interpretation of *de novo* review under the Jackson Law. Clearly, under ***Tucker***, the trial court properly applied the common law writ of certiorari standard in determining whether substantial and material evidence existed to justify the decision of the Commission. Further, we find that the trial court correctly refused to substitute its independent judgment for that of the Commission, since such a substitution was "clearly not the legislative intent." ***Tucker***, 944 S.W.2d at 619. Thus, we find this issue to be without merit.

C.

TWM next contends that the trial court erred in upholding the Commission's denial of the application for an expansion, because, again according to TWM, both the denial by the Commission and the subsequent affirmation by the trial court failed to properly consider the eight statutory criteria under the Jackson Law. We disagree.

With respect to the hearing before the Commission, TWM asserts that there was a lack of evidence to support the Commission's denial of TWM's application. TWM also contends that the Commission's failure to give proper consideration to each of the eight Jackson Law criteria resulted in an "unconstitutional execution of authority delegated by the General Assembly."

To address these contentions in reverse order, we find no error in the Commission's reliance on the *most* relevant criteria in making its decision. As TWM applied for the expansion of an existing landfill, rather than the construction of a new landfill, most of the criteria were not in dispute. The type of waste and the method of disposal at the landfill have not changed. *See* Tenn. Code Ann. § 68-211-704(b)(1)&(2). There would be no difference in the noise and odor created by the landfill. *See* Tenn. Code Ann. § 68-211-704(b)(3). The landfill expansion should not create an increase in traffic, which would call into question the adequacy of roads and bridges. *See* Tenn. Code Ann. § 68-211-704(b)(5). As the current landfill has been in operation since 1993, the expansion would certainly be compatible with the existing development and zoning plans. *See* Tenn. Code Ann. § 68-211-704(b)(7). Clearly, the only two relevant criteria in the instant case are the projected impact on property values, *see* Tenn. Code Ann. § 68-211-704(b)(4), and the economic impact on the county, *see* Tenn. Code Ann. § 68-211-704(b)(6). The Commission was certainly entitled to rely most heavily on these criteria when making its decision.

As to TWM's contention that there was no evidence to support the Commission's decision, we hold that the testimony of John Thornton and Ted Lynn, with respect to both the projected negative impact on property values in the area, as well as the projected substantial amount of tax revenues that Thornton's development would bring to the county, if believed, formed a sufficient basis for the denial of TWM's application. It is obvious that a majority of the Commission accredited this testimony.

TWM next argues that there was insufficient evidence before the trial court to warrant the affirmation of the Commission's decision. However, our review of the record reveals ample proof on which the trial court could and did base its decision. The trial court heard from at least three witnesses with substantial experience in real estate, who testified that the expansion would have a negative impact on Thunder Bend, and, hence, a negative impact on the potential good to the county resulting from the potential success of that development. TWM's own expert witness admitted that he was never asked to take the Thunder Bend development into consideration when analyzing the impact on property values. With respect to the economic impact, the Loudon County tax assessor testified that Thunder Bend could have an "astronomical" impact on the county's tax revenues. Certainly, this was substantial and material evidence on which the trial court could base its decision to affirm the decision of the Commission. As the trial court stated, "even [TWM's] own experts concede that reasonable people could reach the conclusion that expansion of the landfill could negatively impact" the surrounding property values. Based upon all of this evidence, we cannot say that the evidence preponderates against the trial court's factual determinations underpinning its holding that there is material evidence to support the Commission's decision. Accordingly, we find no error in either the Commission's denial of the application for expansion or the trial court's subsequent judgement upholding that action.

D.

Finally, TWM asserts that, if successful on this appeal, it is entitled to attorney's fees and litigation costs pursuant to the Tennessee Equal Access to Justice Act, codified at Tenn. Code Ann. § 29-37-104(a)(2)(A)&(b)(2) (2000). Since this appeal was not successful, it follows that this issue is found adverse to TWM.

V.

The judgment of the trial court is affirmed. This case is remanded to the trial court for the collection of costs assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant, Tennessee Waste Movers, Inc.

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CHARLES D. SUSANO, JR., JUDGE